



UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

TERRY CLAYTON,
Petitioner,
vs.
JACK PALMER, *et al.*,
Respondents.

3:07-cv-0582-BES-VPC
ORDER

This action is a *pro se* petition for writ of habeas corpus filed pursuant to 28 U.S.C. § 2254. Before the Court is respondents' motion to dismiss (Docket #15), along with petitioner's opposition (Docket #18) and respondents' reply (Docket #19 and #20).

On January 17, 2003, petitioner plead guilty to five counts of attempted sexual assault and three counts of attempted lewdness with a child under the age of fourteen. (Exhibits 15, 17, and 18).¹ On March 18, 2003, petitioner was sentenced to 36-240 months for each of the five attempted sexual assault counts, consecutive to one another; concurrent 12-36 months for one count of attempted lewdness; and concurrent 24-96 months on the remaining two counts of attempted lewdness; and lifetime supervision. (Exhibit 20).

¹ The exhibits referenced in this order were provided by respondents in support of their motion to dismiss and are found in the Court's record at Docket #16.

1 Petitioner did not file a direct appeal to the Nevada Supreme Court. Petitioner filed a
2 motion to withdraw guilty plea after sentencing, which was denied by the trial court. (Exhibits
3 21 and 24). Petitioner did not appeal the denial of the motion.

4 Petitioner filed a post-conviction habeas petition in the state district court. (Exhibit 28).
5 The state district court denied the petition. (Exhibit 32). On January 2, 2004, petitioner filed
6 a notice of appeal. (Exhibit 35). On February 19, 2004, the Supreme Court dismissed the
7 appeal as untimely. (Exhibit 38).

8 On July 9, 2004, petitioner filed his first federal petition for a writ of habeas corpus
9 challenging the judgment of conviction in state court case number C185909, under this Court's
10 case number CV-N-04-0362-PMP-VPC. The Court dismissed the petition with prejudice
11 because petitioner's claims were procedurally defaulted in state court. (Docket #22 in CV-N-
12 04-0362-PMP-VPC).

13 The Court received the instant federal habeas petition on November 29, 2007. (Docket
14 #1 and #8). In the instant petition, petitioner is again attempting to challenge his judgment of
15 conviction in state case number C185909. (Docket #8, at p. 2). Although petitioner claimed
16 in his petition that this is his first federal petition challenging the conviction, this is not the case.
17 (Docket #8, at p. 2).

18 "Before a second or successive application permitted by this section is filed in the
19 district court, the applicant shall move in the appropriate court of appeals for an order
20 authorizing the district court to consider the application." 28 U.S.C. § 2244(3)(A). Petitioner
21 has not sought leave of the United State Court of Appeals to file a second or successive
22 petition. Therefore, this Court must dismiss the petition.

23 **IT IS THEREFORE ORDERED** that respondents' motion to dismiss (Docket #15) is
24 **GRANTED** and the petition is **DISMISSED** as successive. The Clerk shall enter judgment
25 accordingly.

1 Dated this 7th day of January, 2009.

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5 UNITED STATES DISTRICT JUDGE
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